

Opinion No. 99-32

BEFORE THE NEVADA COMMISSION ON ETHICS

IN THE MATTER OF THE OPINION REQUEST BY NEIL HARRIS, Sheriff of Elko County

This Opinion is in response to a first-party opinion request filed with the Nevada Commission on Ethics (Commission) by Neil Harris. Mr. Harris is the Sheriff of Elko County. He is also one of the owners of a closely held corporation called Powder House, Inc. (PHI) which operates an indoor pistol range and training facility in Elko. PHI has entered into agreements with several law enforcement agencies within the Elko area in order to establish rates for law enforcement training.

Mr. Harris requested an opinion from the Commission as to whether or not his ownership interest in PHI violated NRS 281.230. Specifically, Mr. Harris asked whether it was ethically appropriate for the Elko County Sheriff's Office to spend taxpayers' dollars so the Elko County Sheriff's Office Deputies can use the indoor PHI Shooting range when he is a partial owner of PHI.

A hearing on the opinion request was held on August 21, 1999. Mr. Harris appeared and presented testimony. At the conclusion of the hearing, Mr. Harris waived his statutory confidentiality, so this opinion will be distributed to the public.

Based on the foregoing, the Commission makes the following Findings of Fact, Conclusions of Law, and Opinion.

FINDINGS OF FACT

1. Mr. Harris is the Sheriff of Elko County.
2. Mr. Harris and his wife own 80% of PHI.
3. PHI operates an indoor, 10 lane shooting range in Elko that opened in October, 1998.
4. PHI hired a manager to handle the day-to-day operations of the shooting range. These duties include, but are not limited to, programs offered by the range, purchases, sales and pricing.
5. Shortly after the range opened, the manager contacted all law enforcement agencies in the Elko area with a proposal establishing a set rate for law enforcement agency officer training.
6. As Sheriff of Elko County, Mr. Harris has the ability to determine the annual qualifications for his deputies regarding firearms training.
7. At the time of the hearing, the Elko Police Department, the Carlin Police Department, the BIA, and the Elko Sheriff's Department had all used Sheriff Harris' range.
8. After the Elko Sheriff's Department used the range, PHI submitted a bill for payment to the Elko County Commissioners for approximately \$500.00. This included the costs of using the range (\$5.00/each for 7 deputies) as well as for ammunition and other incidentals.

OPINION

The Commission has jurisdiction in this matter pursuant to NRS 281.511(1). Based upon the Findings of Fact, the Commission concludes that Mr. Harris is a public official as defined in NRS 281.4365.

NRS 281.230, the relevant statutory provision in this matter, provides:

1. Except as otherwise provided in this section and NRS 218.605, the following persons shall not, in any manner, directly or indirectly, receive any commission, personal profit or compensation of any kind resulting from any contract or other transaction in which the employing state, county, municipality, township, district or quasi-municipal corporation is in any way interested or affected;
 - (a) State, county, municipal, district and township officers of the State of Nevada;
 - (b) Deputies and employees of state, county, municipal, district and township officers; and
 - (e) Officers and employees of quasi-municipal corporations.
2. A member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by the board, commission or body may, in the ordinary course of his business, bid on or enter into a contract with any governmental agency, except the board or commission of which he is a member, if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.
3. A full- or part-time faculty member in the University and Community College System of Nevada may bid on or enter into a contract with a governmental agency if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.
4. A public officer or employee, other than an officer or employee described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he has not taken part in developing the contract plans Or specifications and he will not be Personally involved in opening, considering or accepting offers.
5. A person who violates any of the provisions of this section shall be punished as provided in NRS 197.230 and;
 - (a) Where the commission, personal profit or compensation is \$250 or more, for a category D felony as provided in NRS 193.130.
 - (b) Where the commission, personal profit or compensation is less than \$250, for a misdemeanor.
6. A person who violates the provisions of this section shall pay any commission, personal profit or compensation resulting from the contract or transaction to the employing state, county, municipality, township, district or quasi-municipal corporation as restitution.

Pursuant to NRS 281.230(4), the Commission may grant relief from the strict application of the provisions of NRS 281.230 thus allowing a public officer to bid on or enter into a contract with a governmental agency if it finds that:

1. The contracting process is controlled by rules of open competitive bidding;
2. The sources of supply are limited;
3. The public officer or employee has not taken part in developing the contract, plans, or specifications; and
4. The public officer or employee will not be personally involved in opening, considering or accepting offers.

The question before the Commission is whether NRS 281.230 applies to Mr. Harris, and, if so, whether the Commission should grant Mr. Harris relief available in NRS 281.230(4) based on the facts and circumstances of this

particular matter.

This Commission expressed concern over a number of items regarding this matter. First, the Commission felt it was problematic that, as Elko County Sheriff, Mr. Harris was responsible for the internal policy mandating the annual number of times his deputies had to qualify in firearms training in order to maintain their positions as well as having a significant pecuniary interest in the shooting range. In Other words, the possibility existed whereby Sheriff Harris could force his deputies to use his shooting range in order to keep their firearms training current and, in so doing, financially benefit via his ownership interest in PHI. The Commission felt this placed Sheriff Harris on both sides of the equation.

The Commission was also concerned about Sheriff Harris' involvement in developing contracts, plans or specifications and the opening, consideration and acceptance of contract offers regarding use of the range by law enforcement agencies.

After thorough discussion and deliberation, the Commission concluded that, in order to comply with all ethical requirements, Sheriff Harris must not solicit contracts from law enforcement agencies for the use of his indoor shooting range. If law enforcement agencies are interested in using his facility, they can solicit bids from PHI and any other entity they deem appropriate. Furthermore, the Commission determined that Sheriff Harris cannot have any involvement in responding to any bids submitted to PHI nor can he have any involvement in opening or accepting the bids submitted by law enforcement agencies. Finally, the Commission determined that PHI could not profit from any activities, whether service or supplies, with the Elko County Sheriff's Department. In other words, it would not be appropriate for the Elko County Sheriff's Office to spend taxpayers' dollars so the Elko County Sheriff's Office Deputies can use the indoor PHI shooting range when Sheriff Harris is a partial owner of PHI.

CONCLUSION

In order to comply with all ethical guidelines, the Commission finds that Sheriff Harris must not:

1. solicit contracts from law enforcement agencies for the use of his indoor shooting range;
2. have any involvement in responding to any bids submitted to PHI;
3. have any involvement in opening or accepting bids submitted by law enforcement agencies; or
4. profit from any activities, whether service or supplies, with the Elko County Sheriff's Department.

COMMENT

It is specifically noted that the foregoing Opinion applies only to these specific facts and circumstances. The provisions of the Nevada Revised Statutes quoted and discussed above must be applied on a case-by-case basis, with results which may vary depending on the specific facts and circumstances involved.

DATED: December 6, 1999.

NEVADA COMMISSION ON ETHICS

By: /s/ PETER BERNHARD, Chairman